

Appl. No. 10/627,383
Atty. Docket No. AA 538C
Amdt. dated 01/05/05
Reply to Office Action of 10/05/04
Customer No. 27752

REMARKS

Claim Status

Claims 1 – 9 are pending in the present application. No additional claims fee is believed to be due.

Claim 10 is cancelled without prejudice.

Claim 1 has been amended to more clearly define the tacky skin treatment agent. Support for this amendment is found on page 11, lines 3-7 of the specification. Claim 1 has further been amended to specify that the emollient oil is a hydrocarbon. Support for this amendment is found on page 6, lines 21-22 of the specification.

Claim 3 has been amended to specify that the tacky skin treatment agent is niacinamide. Support for this amendment is found on page 11, line 8 of the specification.

Claim 4 has been amended to specify the level of niacinamide. Support for this amendment is found in the original Claim 3.

Claim 9 has been replaced with a composition claim. Support for this amendment is found in the original claims.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §102(b) Over Doughty et al. (US 5,871,760)

The Office Action rejects claims 1-4 and 8-9 under 35 USC §102(b) as being anticipated by Doughty et al. (U.S. 5,871,760, hereinafter "Doughty"). The amended claims relate to skin care compositions comprising (a) from about 0.1% to about 1% of a carboxylic acid/carboxylate copolymer; (b) from about 0.5% to about 10% of a tacky skin treatment agent selected from the group consisting of niacinamide, nicotinic acid and its esters, nicotinyl alcohol, n-acetyl cysteine, n-acetyl-L-serine, phosphodiesterase inhibitors, trimethylglycine, tocopheryl nicotinate, vitamin D3 and its analogues or derivatives, and mixtures thereof; (c) from about 2% to about 20% of a water soluble humectant; (d) from about 0.5% to about 5% of a hydrocarbon emollient oil having a

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viscosity of less than about 50 mPa's; (e) from about 0.05% to about 5% of a silicone component and (f) an aqueous carrier. The Office Action asserts that the panthenol taught in Doughty reads on the tacky skin treatment agent of the instant claims, and that Doughty therefore teaches each and every element of the instant claims.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053. A rejection based on 35 U.S.C 102(a) or (b) may be overcome by amending the claims to patentably distinguish the present invention over the prior art. M.P.E.P. 706.02(b)-(c).

Applicants have amended instant Claim 1 to specify that the tacky skin treatment agent is selected from a group of skin care actives that does not include panthenol or its derivatives. Doughty therefore fails to teach each and every element of the amended claims. Applicants therefore request that this rejection be reconsidered and withdrawn.

Rejection Under 35 USC §102(b) Over Ha et al. (US 5,997,887)

The Office Action rejects claims 1 - 9 under 35 USC §102(b) as being anticipated by Ha et al. (U.S. 5,871,760, hereinafter "Ha"). The Office Action asserts that the sucrose cocoate taught in Ha reads on the claimed element of emollient oil, and that Ha further teaches each and every element of the instant claims. Applicants have amended instant Claim 1 to specify that the emollient oil is a hydrocarbon. Sucrose cocoate is not a hydrocarbon, as it contains oxygen and hydroxyl moieties. Applicants therefore assert that Ha fails to teach each and every element of the instant invention, and request that this rejection be reconsidered and withdrawn.

Rejection Under 35 USC §103(a) Over Doughty et al. (US 5,871,760), or in view of Ha et al. (US 5,997,887).

The Office Action rejects claims 9 and 10 under 35 USC §103(a) as being obvious in view of Doughty or in view of Ha. Claim 9 has been replaced with a composition claim, and Claim 10 has been cancelled without prejudice. Applicants therefore respectfully request withdrawal of this rejection.

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Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. §102(b) and 35 U.S.C. §103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application and allowance of Claims 1 - 9 is respectfully requested.

Respectfully submitted,

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